

LEHLBACH, (C. F. J.)

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State Protection Against Quackery

BY

CHARLES F. J. LEHLBACH, M. D.

BEING THE

PRESIDENT'S ADDRESS

AT THE

SEVENTY-SECOND ANNUAL MEETING

OF THE

Essex District Medical Society,

HELD AT NEWARK, N. J., APRIL 3, 1888.



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ADDRESS.

Once only, but once too often, was this Society called upon, during the past year, to pay the last tribute of friendship and esteem to a departed brother,—Dr. Wm. O'Gorman, whose memory we cherish.

And it would be, on my part, an inexcusable neglect, were I to omit here the mention of the name of another recently departed brother, once an active member of this Society, though not officially connected with it, for nearly a quarter of a century—since the organization of Union County—as Dr. O'Gorman, an honored fellow of the Medical Society of our State—Dr. Lewis A. Oakley, whose honest, open, genial face and voice always reflected manliness of thought, courage of conviction, and readiness to do the right.

While it is my duty, according to the Constitution of the Society, to read to you an Address, I beg of you not to consider it a slight, on my part, if what I shall say will not be in the form of an exhaustive dissertation on some purely scientific subject. If I shall deviate from the ordinary custom in this respect, I do it in the hope that I will be forgiven for any shortcomings, more readily, as the solider courses of the scientific, literary bill of fare, at this meeting, have been amply provided for by others. The few thoughts to be presented to your consideration on the general

subject of *State Protection Against Quackery* will be not entirely untimely, perhaps, in these times, when "*free trade or protection*" begin to loom up as battle cries of a near presidential election, and when recent occurrences in this County have had a tendency to call renewed attention to the subject.

The earliest cases of difficult labor of which, as far as I know, any record exists, date back four thousand years, more or less. We read in the Thirty-fifth Chapter of Genesis, in the account of Jacob's Journey to Ephrath, that "Rachel travailed and she had hard labor; and it came to pass, when she was in hard labor that the mid-wife said unto her, fear not; thou shalt have this son also; and it came to pass as her soul was in departing (for she died) that she called his name Ben-oni; but his father called him Benjamin."

Two important facts are obvious in this short narrative: first, that in a protracted, hard case of labor, in which the mother died, the child was saved; second, that there was a mid-wife in attendance and that she knew enough of her business to enable her to console poor dying Rachel that the child would be safe.

The next case we find in the Thirty-eighth Chapter of Genesis, where the accouchement of Tamar is described as follows:

"And it came to pass in the time of her travail, that, behold, twins were in her womb,—and it came to pass, when she travailed, that the one put out his hand: and the mid-wife took and bound upon his hand a scarlet thread, saying, this came out first. And it came to pass, as he drew back his hand, that, behold, his brother came out: and she said, How hast thou broken forth?

this breach be upon thee. Therefore his name was called Pharez. And afterward came out his brother that had the scarlet thread upon his hand; and his name was called Zarah."

Short and concise as this narrative is, handed down to us from a time antecedent to Ramses the Great, whose embalmed and mummified body, recently discovered, now forms one of the chief curiosities of the Museum at Bullack, its obstetric significance is of interest in more than one point. In the first place, it must be noticed that the mid-wife in attendance, when labor commenced, had knowledge enough to enable her to diagnose twins; and secondly, when there was an arm-presentation of the one, while taking precautions to establish the right of primogeniture, she was wise enough to make no vain and ignorant efforts to hasten delivery by either pulling at the arm or by trying to push it back by force until the arm would be nearly torn off the shoulder, but she waited, good mid-wife as she was, until, by the contractions of the womb, the head of the second child was driven down upon the breech and legs of the first, nature thus accomplishing spontaneous version by force applied from within.

Time and place now change. Genesis has been followed by the Exodus—on to the Prophets and the Kings—to a new dispensation; empires have arisen and fallen; there has been a long night of mediaeval darkness, when, amidst the ruins and decay of old, dying civilizations, the Arabs alone uphold the beacon of what is left of science and art. Columbus rediscovers a New World—probably the oldest—and triumphant democracy begins its march in the steady process of evolution in the mighty experiment of self-

government. But, though the times may have changed, though the place of the scene may have shifted from the land of the Canaanites and the Hittites to the land of the New Jerseyites—still it is the old, old story—a woman in the pangs of labor; a wife in travail, with the mid-wife at her side. And it came to pass, as the waters broke, that the child, as in the case of Tamar, put out its hand; and the mid-wife, being a sensible woman, knowing her business, recognizing a shoulder presentation, knowing that, there being no twin, to allow for the hope of spontaneous version, *the child must be turned* to save it and the mother, sent for assistance. The result of the assistance thus sent for was a tragedy—the after-play, enacted on the last day of last week in our Court House, almost a farce.

The shocking, disgusting details of the wanton sacrifice of a woman and a child on the altar of legalized quackery, I need not here repeat. They were more than amply reported in the papers. And, that I may do full justice to the officers of the State, whose duty it is to protect society against the results of criminal ignorance, I call your attention to the verbatim report of the remarks of the judge, sentencing the criminal. He said, as is reported in the *Newark Daily Advertiser*:

“The Grand Jury of this county indicted you for manslaughter in causing the death of Mrs. Rutan through carelessness, negligence and ignorance, and after a fair trial the traverse jury found you guilty. With the justice of this verdict the Court is satisfied, and it only remains to pronounce the sentence which the law imposes. In determining what that sentence should be the Court has considered that the killing was necessarily without malice; for, had it been otherwise, your crime would have been murder. The

jury considered that you were actuated doubtless by good motives; that if you had known the right would gladly have hurried it. Your crime was ignorance; you hold yourself to be a person skilled in obstetrics, and you voluntarily undertook a duty which you were incompetent to perform. As the result of your ignorance and incompetence the life entrusted to you was lost, and the law holds you accountable. One who claims to be a surgeon is bound to bring to bear competent skill and information, and if by reason of his ignorance or want of skill death ensue, he is guilty of a crime, and only by the punishment of such crimes can the public be protected, and those who are ignorant and unskillful made to understand that they cannot with impunity trifle with human life.

The sentence of the Court is that you be imprisoned at hard labor in the County Penitentiary for the term of six months."

How truly this sentence embodies the essence of the object of punishment in such cases! How directly it states that the object of the punishment is not retaliation upon the criminal, but the *protection of Society!* "*Only by the punishment of such crimes can the public be protected,*" says the learned Judge; "*and those who are ignorant and unskillful made to understand that they cannot with impunity trifle with human life.*"

But how can you reconcile with this principle laid down by the learned Judge the fact that when it was in the Law's power to protect Society against the criminal ignorance of this particular offender for a term of even ten years, the law deemed its duty done by protecting Society for a paltry six months against killing by ignorance—just for the term of a somewhat prolonged summer vacation?

Here then is an illustration of the insufficiency of

legal provisions to protect Society against the dangers of quackery. During the last twenty-five years we have witnessed laws upon laws passed, amended and re-amended, to provide for registration of those properly qualified to practice medicine, so as to enable the public to distinguish between those who are qualified, and those who are not. But in almost all cases, when attempts have been made to bring to trial and punishment, according to the provisions of the law, persons who practice medicine without legal sanction, such attempts have been generally abortive, or have turned into a farce. The disinclination of law-officers to institute vigorous prosecution in such cases, the disinclination of grand juries to indict, the disinclination of petit juries to convict, and the disinclination of judges to inflict more than nominal punishment in such cases, may be attributed, less to any willful neglect of duty, than to certain erroneous conceptions as to the real object of such laws, which pervade not only our halls of justice, but Society generally. Some of the provisions of our statutes, under the latent influence of such false conceptions, have had a tendency rather to legalize quackery than to protect Society against it.

What can be more ridiculous, for instance, than the provision of the law still, I think, in force, that the illegal practice of medicine, if only continued for a certain number of years, shall constitute the person so practicing a legal practitioner! Nothing illustrates more forcibly than this, the idea that right and wrong, crime and virtue, sin and saintliness, are but relative terms, as the world goes; aye, the very persistence in wrong-doing, crime and sin, may evolutionize the sinner into a saint, provided he has succeeded in wrapping himself up in saintly surroundings.

It will hardly be necessary to appeal to the experience of the members here assembled, to bear out my own, when, in conversation with friends and the public, in every-day life, this question is broached: "Why," we are generally accosted, "why don't you doctors bring these fellows before the courts? Why don't your profession try to protect itself against these quacks?"

Herein lies one of the popular, erroneous conceptions referred to. It is assumed, if not theoretically —practically, at least by the public generally, by legislators and by those who administer the laws, that the object of laws regulating the practice of medicine is to protect the medical profession. **PROTECT THE MEDICAL PROFESSION!** It—the most comprehensive, the most progressive, the noblest of sciences! Protect the sun against the passing moon, defend the stars against the fleeting clouds, shield the unbroken, eternal roll of the ocean's waves against dame Partington's broom. Do *we* want, do *we* need, protection? When the great Physician was once reproached that he ate with publicans and sinners, he said: "They that be whole need not a physician, but they that are sick." The weak and the sick are they who need protection, who need the physician, who need protection against the pretenders, against the ignorant quacks, to whom Job exclaimed: "Ye are forgers of lies, ye are all physicians of no value."

The public mind, once disabused of this erroneous conceit that the regulation of the practice of medicine has anything to do with the special interests of the medical profession, our legislators once brought to a clear understanding of the fact that whatever they

deem necessary to enact in this respect should be completely disassociated from any idea of class legislation, from any suspicion of protecting the practice of medicine in a business view, and that the sole object of such regulation must be in the interest of the public and of the public alone, and those upon whom devolves the duty of executing and administering the laws once brought to appreciate fully the weight of responsibility imposed upon them for the public good and welfare—the way will be cleared for a better understanding of the main question:

How far should the State, by law, protect its citizens against the perils of quackery, by regulating the practice of medicine?

It is necessary here to bear in mind that prohibitory, protective, preventive or regulative legislation never fulfills its object unless public opinion is educated up to a point where prohibition, protection, prevention and regulation will be accomplished by the voluntary act of the community alone without any legislation whatever, based only upon strong public opinion. Until this point is reached, prohibition does not prohibit, protection does not protect, prevention does not prevent and regulation does not regulate. The effect of all attempts at real or imaginary reforms by strong prohibitive or regulative legislation, unsupported by the moral force of public opinion, is worse than useless, because, on account of the impossibility of execution, it must tend to bring all law into contempt. Whatever laws you please to pass to prohibit the practice of medicine by unauthorized persons, pretenders and quacks, you will not succeed in stopping the practice, as long as there are knaves to be found in the world.

eager to impose upon the public, and fools to believe them. Particularly is this the case in this country under our form of government, which is both republican and essentially democratic—government from the bottom up, not from the top down—where, in spite of all evanescent tendencies to stronger, more centralized, paternal rule, and the disposition to seek relief from every little passing evil through some kind of hasty, experimental legislation, the good old Jeffersonian maxim still holds good that that government is the best which governs least. And may this spirit of freedom and independence in the average American citizen grow and grow stronger, in these days of pageantry and adulation of dead and dying emperors.

Personal liberty, involving the right of every American citizen, of every American man or woman, to pursue what study he or she pleases; to follow what trade, occupation, vocation or profession seems to each most agreeable and promising most success in life, will only be abandoned when the edifice reared by the fathers of 1776 shall have been leveled to the ground, and State-Socialism and Communism shall have taken its place. The cobbler may get disgusted with his last and turn to preaching, the driver of canal mules may in his long meditative meanderings prepare his mind eventually to drive bulls and bears in Wall street, the mason may tire of his hod and trowel and fly to medicine to do justice to his ambition—it is their right to do so; or the cobbler, the mule-driver and the hod-carrier may combine their forces and, if they are smart enough to obtain the influence of some politicians, get a charter for a medical college, and embark in the profitable business of selling diplomas, which, duly

registered in our Court Houses, will enable other cobblers, mule drivers and hod carriers to freely distribute, for good cash, the blessings of whatever medical knowledge they may have been able to scrape together.

It, on the one hand, then, there can be no restriction from the pursuit of the study and practice of medicine, still less can any legislative regulation interfere with the right of ownership of every American man or woman to their own bodies and souls, unless by due process of law convicted of crime or declared insane. And this right to ownership of the body implies the right of choosing whatever physician of body or soul, or whatever mode of treatment, when that body is sick. The American citizen, when sick, has a right to get well, or not, as he pleases, by powder or blister, by pill or by prayer. If he falls in the hands of a quack, so much the worse for the patient; if, by bad luck, the quack falls in the hands of the law, so much the worse for the quack; but, on the whole, there seems to be really no possibility of protecting American Society by legal enactments.

And here, disagreeable as it may appear, and however fervently we might wish that it were otherwise, it must be stated as a fact difficult of denial, that the possession of a Doctor's diploma, however satisfactory it may be in the eyes of the law, as a matter of formality, furnishes no positive proof that the owner is really a physician of proper qualification. Fortunately, or unfortunately—that depends upon our optimistic or pessimistic propensities—the State of New Jersey is one of the exceptional States of the Union having no School or College of Medicine within her borders. The

industry of turning the raw material of the annual crop of medical students into the fully burnished, polished manufactured article, duly labeled "M. D." is one of the very few industries which New Jersey has neglected. Hence we are thrown upon a, so to say, free-trade market. Luckily a corner has never occurred in it; the supply has always been fully up to the demand, —in quantity at least, and in quality the profession of New Jersey, probably occupies as high an average as that of any other State. But, no matter; the State of New Jersey, having no educational institution, chartered by the State, authorized to grant diplomas, except that under certain conditions the State Medical Society may grant them on recommendation of the district societies, the candidate having previously passed an examination —the law at present regulating the practice of medicine is broad enough to let in the graduates of every college in the land, wild-cat and all and of every college or university of foreign countries (whose diploma would not even constitute a license to practice at home) by simple registration of a copy of the diploma, with no authoritative power vested in any body to verify its authenticity, its genuineness, or to decide regarding the identity of the person whose name it bears, with the person presenting it.

While we must acknowledge that the facilities for medical education offered by the regular colleges of the United States, at the present time, on an average, have not kept, could not keep, full pace with the exceptionally rapid advances, if not to say, new departures, which medical science has made within our generation, it would be unphilosophical to allow this to let us look despairingly or even doubtfully at the coming of

a better state of things. When we see three and four years graded courses in a number of the oldest schools of the country, with the courses extended from four and five to full seven months, take the place of the old two full courses, one a repetition of the other; when we see fully-equipped and well-conducted laboratories and widely extended clinical work take the place of the former "reading medicine with a preceptor;" when we see in those of the schools of American medicine which have given tone and respectability to American medical education, an almost rivalry to present the smallest number of graduates in proportion to the number of matriculants, indicating a higher standard of requirements needed to pass examinations; when we see the old oral examinations give way to written examinations, which test more fully the medical knowledge of the candidate, as well as his literary culture; when we see large numbers of graduates obtaining and taking advantage of hospital positions, acceptable to but proportionately limited numbers thirty years ago, on account of the much smaller number of hospitals, and taking advantage of the clinical facilities offered by polyclinical and post-graduate schools and when entrance examinations will before long be made obligatory in most schools of any pretension, surely there is no cause for despondency, but rather cause for rejoicing that the voluntary efforts, both of faculties and students, are, if slowly, still surely testifying to a steady and healthy and a more complete development of medical education, and to a growing appreciation of the just demands which society has a right to make of the medical profession, though the latter spurns the assistance and protection of the State, and though the

State permit quackery full sweep, dealing with it even most leniently when caught in and convicted of crime.

It might be claimed that a more strict law of registration of diplomas, limiting their legal value to certain colleges of acknowledged repute and standing, with Boards of Health, or some other body of officials, authorized to verify them, and then to proceed with the prosecution of all offenders, would protect Society. Efforts in this direction have been often made, but as often failed. In several of the States, within the last few years, such attempts have been made, and apparently, at least, with some degree of success, in driving some of the more notorious individuals engaged in illegal practice from one State into another. But the real protection of the public against quackery thereby amounts to little. The fight between quackery and the legitimate, honorable practice of medicine, if fight there be, must go on in the future as it goes on to-day, as it has gone on in the past, leaving the final decision to the slowly-working influences of advancing intelligence, education and enlightenment.

And is this all? I hear you ask. Is there, indeed, no way by which the State may, if not protect its citizens, at least throw some kind of warning signal around the places of danger? Is there no way in which society may protect itself without, on the one hand, apparently creating a favored class, and on the other, interfering with the freest exercise of individual liberty?

I think there is, and though I shall offer you no fully detailed and matured plan, I hope that the suggestions about to be made and which will close these remarks will tend at least to draw attention to the subject, and

lead to fuller discussion of its possibilities hereafter, and perhaps in other places.

The State of New Jersey in its Laws providing for and regulating its system of public education—while on the one hand providing for the supply of properly educated teachers through a system of Normal Schools, the graduates of which have by proper examination shown their fitness to teach, has, on the other hand, provided for a further supply by providing for examinations of such persons, who may offer themselves as teachers; and no local Board has power to appoint as teachers any but those found competent by formal legal examination. This does not prevent those in charge of private, semi-private or parochial schools, or any individual from employing any person as teacher whom they may choose; nor does this interfere with the right and liberty of any citizen of the State to devote him or herself to the duties of teaching provided he or she can get pupils. The State and through it the Boards of Education and School Trustees assume the control only of those directly under their charge.

Now, not exactly analogous, but somewhat similar at least, in my plan would be the relation of the physician to the State. The latter should, in my way, assume to exercise any control over medical practice, but it should provide some means by which those of its citizens in need of medical aid would be enabled to know who are competent to practice or not, or, to express it yet better, at least to give to those who wish the public to know that they consider themselves competent to practice, an opportunity to prove their qualification before a State Board of Examination, which should be rigid,

strict, impartial and thorough—not limited to the evidence of diplomas or certificates but to the results of a strict and full examination.

The public, on the other hand, would thereby have this protection: that they would not unknowingly employ the medical services of any one not officially qualified, except by their own voluntary act, and the responsibility of whatever results would be thrown upon themselves. With a State Board of Examination, properly constituted, there would be no fear of partiality or injustice. Any one in possession of a diploma or other authorized document entitling him to practice could continue to do so, as he does now, but, in order to insure its citizens as far as possible against the perils of quackery, in the absence of any educational institutions of medicine under its control, the State should give to those who wish, the opportunity of becoming Licentiates of the State. Quackery flourishes, not on account of the desire of the people to employ ignorant or incompetent pretenders, but because, under present relations, it is difficult for the public to distinguish the true from the false. There should be nothing to hinder the adoption of a plan like this, as far as the community and the State are concerned. The public certainly would have no objection to be furnished with an official guarantee of proper capacity of at least a part of the persons practicing medicine in the State, while the State would undoubtedly be glad to be rid of the present useless, cumbersome statutes.

If any further inducement would be needed for practitioners of medicine, particularly for the younger members just entering the profession, to apply for examination for a State license, it would be the simple

and just provision of the law, that the testimony of no physician should be accepted in any of the Courts, as that of an expert, unless he be a State licentiate, and that no township, town, city or county in the State, authorized to appoint or employ practitioners of medicine, in their capacity of physicians, to render services as such, for emolument or pay, or not, should appoint or employ such practitioner unless the same be duly licensed by the State. This would be an incentive for every young graduate to excel in real worth, to look upon the necessity of real acquirements in medical science and art as the chief means of accomplishing success, rather than upon mere social accidents or political affiliations, such as under existing circumstances often seem to be the ruling powers.

The greater opposition to the plan here suggested in outline, would, I fear, primarily at least, come from the profession itself, particularly those more advanced in years. It might be hard for many of us to brush away the cobwebs that may have accumulated in memory's recesses, shutting out and darkening the light that once illuminated all the details of the elementary branches of our science. It might not be easy to many of us, perhaps, to come fully up to the requirements of an examination in minute modern pathological investigation. Yet still harder would it be, undoubtedly, for some of us to relinquish ambition, to be obliged to resign ourselves to the sad conviction that we have ceased to advance, that we are but landmarks of the past, that we are no longer marching in the front, or with the body of the army, but stragglers in the rear. All this cannot be helped; it must be borne.

But to the young men in the profession, those whose

good fortune has placed their active entrance into it in an age of unprecedented new discoveries, opening up worlds of new truths that had been hidden for ages, to them I would appeal to unfurl the banner once again that shall lead us on to a higher professional life, that shall lead on to a truer appreciation of our science on part of the community, and that shall protect the people against quackery by giving them an opportunity to distinguish the wheat from the chaff. Unfurl that banner with its motto, "VOLUNTARY STATE EXAMINATION!"

